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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,938	08/04/2003	Kevin A. Kelly	D24-1d	5790

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EXAMINER

NGUYEN, TAM M

ART UNIT	PAPER NUMBER
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3764

MAIL DATE	DELIVERY MODE
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02/16/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/633,938	Applicant(s) KELLY ET AL.	
	Examiner TAM NGUYEN	Art Unit 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 August 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 128-134, 145-156, 171-182, 198-209, 212 and 228-239 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 128-134, 145-156, 171-182, 198-209, 212 and 228-239 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 8/4/03 & 11/15/06 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Appeal Brief

1. In view of the appeal brief filed on August 30, 2010, PROSECUTION IS HEREBY REOPENED. There are no art rejections; however, a new matter rejection was inadvertently left out of a previous rejection and that new matter rejection is still valid and is set forth below along with related objections to the drawings and the specification.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “first and second opposite extremities” of the belt, the belt’s “contact with a **substantial majority** of a patient’s chest”, the “**continuous contact**” of the belt with the patient’s “front, sides and a portion of the back of the chest”, the fastening of the power unit to the belt, “fastening to any apparatus any of said extremities of said belt not already fastened to said apparatus”, and the “powered belt tightener coupled to said extremities” must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate

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figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

3. The amendment filed June 26, 2008 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: substantially subsection (A) of each of the independent claims. In particular, wrapping a belt around and "in contact with a substantial majority of a patient's chest near said patient's sternum, said belt being in continuous contact with the patient's chest, including the front, sides and a portion of the back of said patient's chest, said belt (1) extending around and being in contact with a major portion of the circumference of said chest, (2) extending around and being in contact with the front, sides and back of said chest."

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

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The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 128-134, 145-156, 171-182, 198-209, 212 and 228-239 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In claims 128, 145, 171, 198 and 228, the following limitation disclosed substantially in subsection (A) of each independent claims was not described in the specification: wrapping a belt around and "in contact with a **substantial majority** of a patient's chest near said patient's sternum, said belt being in **continuous contact** with the patient's chest, including the front, sides, and a portion of the back of said patient's chest." Claims 129-134, 146-156, 172-182, 199-209, 212 and 229-239 are also rejected for being dependent on a rejected base claim.

Response to Arguments

5. Applicant's arguments, see Appeal Brief, filed August 30, 2010, with respect to the drawings have been fully considered and are persuasive in part and not persuasive in part. In particular, the drawings have adequately shown the "first and second electrodes" of the claimed invention but the drawings do not show the other limitations as listed above in paragraph 2. Although applicant elected the species drawn to Figure 9, applicant continually refers to the other figures, including Figure 10 which is not even a part of the invention, in an

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attempt to show the claimed invention. Applicant also argues that the drawings disclose the limitations listed above since page 10 of the specification discloses that the invention should not be limited to specific terms and each specific term includes all technical equivalents. Examiner respectfully disagrees with this argument since the specification does not disclose that components of the species are interchangeable. Furthermore, none of the figures show the belt being in “contact with a **substantial majority** of a patient’s chest” since a substantial majority would require the figures to show a belt being in contact, up to 99%, with a patient’s chest. In particular, contrary to applicant’s argument, Fig. 9 does not show the “first and second opposite extremities” of the belt, the “contact with a substantial majority of the patient’s chest” or “continuous contact” of the belt with the patient’s “front, sides and a portion of the back”.

6. Applicant’s arguments, see Appeal Brief, filed August 30, 2010, with respect to specification have been fully considered and are not persuasive. In particular, applicant discloses a few excerpts from the specification but none of them disclose that the belt “is in contact with a **substantial majority** of a patient’s chest or that the belt is in **continuous contact** with the patient’s chest, including the front, sides and a portion of the back of said patient’s chest.

7. Applicant’s arguments, see Amendment, filed June 25, 2008, with respect to claims 128-134, 145-156, 171-182, 198-209, 212 and 228-239 under 35 USC 112 first paragraph have been fully considered and they are not persuasive. Applicant argues that wrapping a belt around and in contact with a substantial majority of a patient’s chest with the belt being in continuous contact with the

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patient's chest including the front, sides and a portion of the back of said patient's chest is a simple step that just requires wrapping of a belt around a body part.

Furthermore, applicant argues that a skilled artisan in the field of designing medical implements cannot possibly have any difficulty in accomplishing this simple operation. Examiner respectfully disagrees with this contention. Although the step of wrapping a belt around a user is arguably simple, it is the particular way in which the belt is wrapped and thus claimed which requires the claims to be rejected. Applicant discloses that the belt is specifically wrapped around and in contact with a 1) **substantial majority** of a patient's chest and 2) the belt is in **continuous contact** with the patient's chest including the front sides and a portion of the back of the patient. The first limitation containing the phrase "**substantial majority**" is neither disclosed in the specification or any of the figures and the second limitation containing the phrase "**continuous contact**" is neither disclosed in the specification or Figure 9, the drawing drawn to the elected species. Since the particulars of how the belt is to be wrapped around the patient is unsupported in the specification or the drawings drawn to the elected species, the claims remain rejected under 35 USC first paragraph.

8. Applicant's arguments, see Appeal Brief, filed August 30, 2010, with respect to claims 131, 132, 148, 149, 174, 175, 201, 202, 228 and 232 under 35 USC 112 first paragraph have been fully considered and are persuasive. In particular, applicant has provided an adequate specification to enable those skilled in the art to make and use the invention.

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9. Applicant's arguments, see Appeal Brief, filed August 30, 2010, with respect to claims 128-134, 145-156, 171-182, 198-209, 212 and 228-239 under 35 USC 112 second paragraph have been fully considered and are persuasive. In particular, applicant has provided an adequate specification to enable those skilled in the art to make and use the invention.

10. Applicant's arguments, see Appeal Brief, filed August 30, 2010, with respect to claims 128-134, 145-156, 171-182, 198-209, 212 and 228-239 under 35 USC 103(a) have been fully considered and are persuasive. In particular, examiner agrees that neither the Dedo or the Cook reference or a combination thereof discloses a device and method for CPR treating patients since both references disclose self-administered devices and a person requiring CPR would not be able to use such devices. The rejection of claims 128-134, 145-156, 171-182, 198-209, 212 and 228-239 under 35 USC 103(a) has been withdrawn.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Please see attached form PT0-892.

12. To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/LoAn H. Thanh/

Supervisory Patent Examiner, Art Unit 3764

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TAM NGUYEN whose telephone number is (571)272-4979. The examiner can normally be reached on Monday - Friday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on 571-272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

January 19, 2011

/Tam Nguyen/
Examiner, Art Unit 3764

/LoAn H. Thanh/
Supervisory Patent Examiner, Art Unit 3764